

Advisory Opinion

IECDB AO 2006-16

December 21, 2006

Michael Davis, PH.D.
820 45th Street
West Des Moines, Iowa 50265

Dear Dr. Davis:

This opinion is in response to your letter of November 28, 2006, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You currently serve as Superintendent of Woodward Resource Center (WRC) that is part of the Department of Human Services (DHS). You are interested in leaving state government and accepting doing work with Mosaic, a private nonprofit company, implementing a federal earmarked project entitled "The Road to Community" (Project). The Project has not involved a case, proceeding, or application involving Mosaic and DHS. If Mosaic receives the federal funding, it will not require a case, proceeding, or application involving DHS or any other state agency. Mosaic would need the cooperation of DHS staff. Your work would involve discussions with DHS, among other groups.

In your capacity as Superintendent of WRC, your involvement with the Project has involved meeting with Mosaic three times over the past three years discussing various issues and you have sent letters of support to the Iowa Congressional delegation indicating WRC support for the Project. You did not participate in preparation of any proposal, in preparation of any budget, or in the planning of the structure of the Project.

QUESTION:

Is it permissible for you to provide services to Mosaic as an independent contractor for two years after leaving the Department of Human Services concerning The Road to Community project?

OPINION:

Iowa Code sections 68B.5A and 68B.7 place restrictions on state officials and employees engaging in certain activities within two years of leaving state government.

In applying the language of Iowa Code section 68B.5A, we first find that as Superintendent of WRC you are the “head of a major subunit of a department.” Therefore, pursuant to Iowa Code section 68B.5A(5) for two years after leaving state government you cannot become a “lobbyist” before DHS or before any state officials, employees, or agencies that you had “substantial and regular contact” with as part of your duties with DHS.¹ Thus, your work as an independent contractor with Mosaic, or any other entity, must not include lobbying DHS or other state officials, employees, or agencies you had “substantial and regular contact” with while employed with DHS. You could be a lobbyist before any other state officials, employees, or state agencies.

Pursuant to Iowa Code section 68B.7 you cannot, for two years, “appear before the agency” (DHS) or “receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application” that you were “directly concerned and personally participated” during your employment with DHS. From your opinion request, it does not appear that you have been involved with any case, proceeding, or application involving Mosaic while employed with DHS. It also does not appear that your work on the Project will involve any “case, proceeding, or application.”

Thus, so long as you comply with Iowa Code sections 68B.5A and 68B.7, we do not believe that you are prohibited from providing services to Mosaic on The Road to Community project within two years of leaving employment with the Department of Human Services.

In closing, we do invite you to seek further Board guidance in the event that you provide services to other entities that may involve communications with DHS or if you desire an opinion on the specific application of the lobbying laws to your activities.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ Note the definition of “lobbyist” in Iowa Code section 68B.2(13) that a person who by “acting directly” encourages the “passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.”